

Amendments to the Drawings

Attached is a marked-up drawing for Figure 2. Also attached is a Replacement Sheet for Figure 2.

REMARKS

The preceding amendments and following remarks are submitted in response to the Final Office Action mailed November 9, 2005, setting a three month shortened statutory response ending February 9, 2006. With this Amendment, claims 29 and 33 have been amended and claims 34-39 have been added. Claim 25 was previously cancelled. Claims 1-24 and 26-39 remain pending in this application. Reconsideration, examination and allowance of all pending claims are respectfully requested.

Amendments to the Drawings

Applicants have amended Figure 2 in order to more clearly show one of the embodiments of the Application. Specifically, the vortex plate is shown in Figure 2, along with showing the approximate water line in relation to the vortex plate. Support for this amendment to the drawings can be found, for example, at page 6, lines 9-17 of the Application as originally filed.

Amendments to the Claims

Claims 29 and 33 have been amended in order to better describe the claimed invention. Applicants have also added dependent claims 34-39 to more completely claim certain aspects of the subject matter of the application. Support for this amendment and the new claims can be found, for example, at page 6, lines 9-17 of the Application as originally filed. Applicants assert that these claims are allowable because they are dependent on allowable independent claims and because they recite additional patentably distinct elements.

35 U.S.C. § 103 Rejections

Claims 1-24 and 26-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Karliner, U.S. Patent No. 5,744,072 (hereinafter "Karliner") in view of PCT application Publication No. WO 02/38510 to Henley (hereinafter "Henley"). Applicants respectfully traverse this rejection. In order for prior art to render a claim obvious, each and every element of the claim must be present in the prior art. See M.P.E.P. §2143.03.

In part 2 of the Office Action, it was asserted that Karliner “substantially” discloses the invention of the Application except for a submergible, adjustable vortex shield. Further, it is asserted that Henley supplies this missing element. Specifically, it was asserted that a vortex plate or shield is supported by jack screws, and that these jack screws allow the vortex plate or shield to be adjustable.

However, a search through the text of Henley reveals that jack screws are not mentioned anywhere in the application. Even though they are not mentioned in the Henley specification and the figures of Henley appear to simply show rods that support that support the plate or shield, it is asserted in the Office Action that Figure 2 shows the plate or shield being supported by jack screws. Applicants respectfully disagree with this assertion. A jack screw is an assembly that contains a screw, where the screw can be turned and the act of turning the screw can change the position of an object. Applicants respectfully assert that there is nothing in Figure 2 that would lead to the conclusion that such a structure is present in Henley. First, the low resolution of Figure 2 makes it impossible to ascertain exactly what the structure of the vortex plate supports are. When looking at the figure, it is not apparent that the elongate support elements for the vortex shield (31) even have any screw threads on them.

In addition, the elongate supports for the vortex shield (31) in Figure 2 cannot apparently be turned. It appears as though the end of the rods that are attached to the vortex shield (31) are attached in some sort of bracket, and it does not appear as though this bracket would allow for the rods to be turned. Thus, these cannot be referred to as jack screws, and Applicants assert that Henley does not disclose an adjustably disposed vortex plate or shield, and the combination of Karliner and Henley cannot render the claims of the current Application obvious.

In fact, not only are jack screws not apparently shown anywhere in the Henley disclosure, but even if they were mentioned, they would have to be disclosed as an element that allows the plate or shield to be adjustable, an aspect that is not mentioned

anywhere in the Henley specification. In asserting that Henley contains jack screws and that the presence of jack screws supply the missing “adjustably disposed” plate or shield, the Examiner appears to be making an inherency argument. That is, it appears as though an argument is being made that the device as shown in Figure 2 is inherently adjustable even though this is not mentioned anywhere in the specification of Henley.

Applicants assert that this is an incorrect use of the inherency doctrine. In order for an element to be inherently present, the element must necessarily be present. That is, it must be true. See M.P.E.P. 2112. In this case, the support mechanism of Henley is not necessarily adjustable, as apparently asserted in the Office Action. For one thing, and as mentioned above, the specification of Henley actually appears to show that the elongate supports for the vortex shield (31) cannot be turned (because of the brackets), and thus it cannot be said that an adjustable jack screw system is necessarily present. Also, even if these structures were jack screws, jack screws are not always incorporated into structures in such a way to make them adjustable. A jack screw can be incorporated into a design in order to allow a structure to be placed at a correct position during construction. The jack screw can then be welded in place in order to prevent the structure from being inadvertently moved. As mentioned earlier, for an inherency argument, the element must necessarily be present. Because jack screws can be incorporated into a structure in a non-adjustable manner, an adjustable vortex plate or shield is not necessarily present in Henley.

For at least the above reasons, the combination of Karliner and Henley do not contain each and every element of independent claims 1 and 22. Because they are dependent on claims 1 and 22 and because they contain additional patentably distinct elements, Applicants assert that claims 2-21, 23, 24 and 26-28 are also patentable.

Claims 29-33 were rejected under 35 U.S.C. §103(a) as being unpatentable over Karliner, in view of Schiller, U.S. Patent No. 4,741,825 (hereinafter “Schiller”). Applicants respectfully traverse this rejection. In order for prior art to render a claim

obvious, each and every element of the claim must be present in the prior art. See M.P.E.P. §2143.03.

In part 3 of the Office Action, it was asserted that the Karliner discloses most of the elements of claim 29 except for several missing elements. Specifically, it is stated that Karliner is missing an adjustable vortex plate or shield, as required by claim 29. Part 3 of the Office Action states that this missing element is supplied by Schiller. Applicants respectfully disagree that every element of claim 29 is disclosed in the combination of Karliner and Schiller.

As an initial matter, claim 29, as amended, does not simply require an adjustable vortex plate or shield. Claim 29 recites, in part, the step of providing an adjustable, submergible vortex shield. The combination of Karliner with Schiller does not provide for such an element. Schiller states that the shield of Schiller “floats on the surface of the aerated substance and is connected to a support structure by flexible, elongate members with allow the shield to float over a defined surface area of the aerated substance above the aerator’s propeller.” See column 1, lines 61-65 of Schiller. The vortex shield of Schiller is not apparently submergible. Thus, adding the vortex shield of Schiller to the aerator of Karliner would not result in the claimed method of claim 29, which includes the step of providing a fluid agitator having an adjustable, submergible vortex shield. Because each and every element of claim 29 is not disclosed in the combination of Karliner and Schiller, this combination cannot render claim 29 obvious. Further, because they are dependent on claim 29 and because they contain additional patentably distinct elements, it is asserted that claims 30-33 are also patentable.

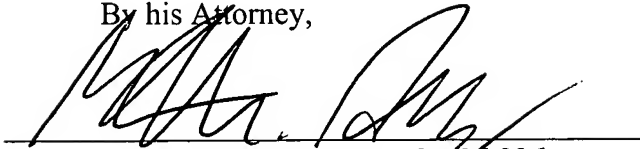
Reexamination and reconsideration are respectfully requested. It is submitted that all pending claims are currently in condition for allowance. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at 612-677-9050.

Respectfully submitted,

DANIEL J. DURDA

By his Attorney,

Date: Jan 31, 2006

A handwritten signature in black ink, appearing to read 'G. M. Seager', is written over a horizontal line.

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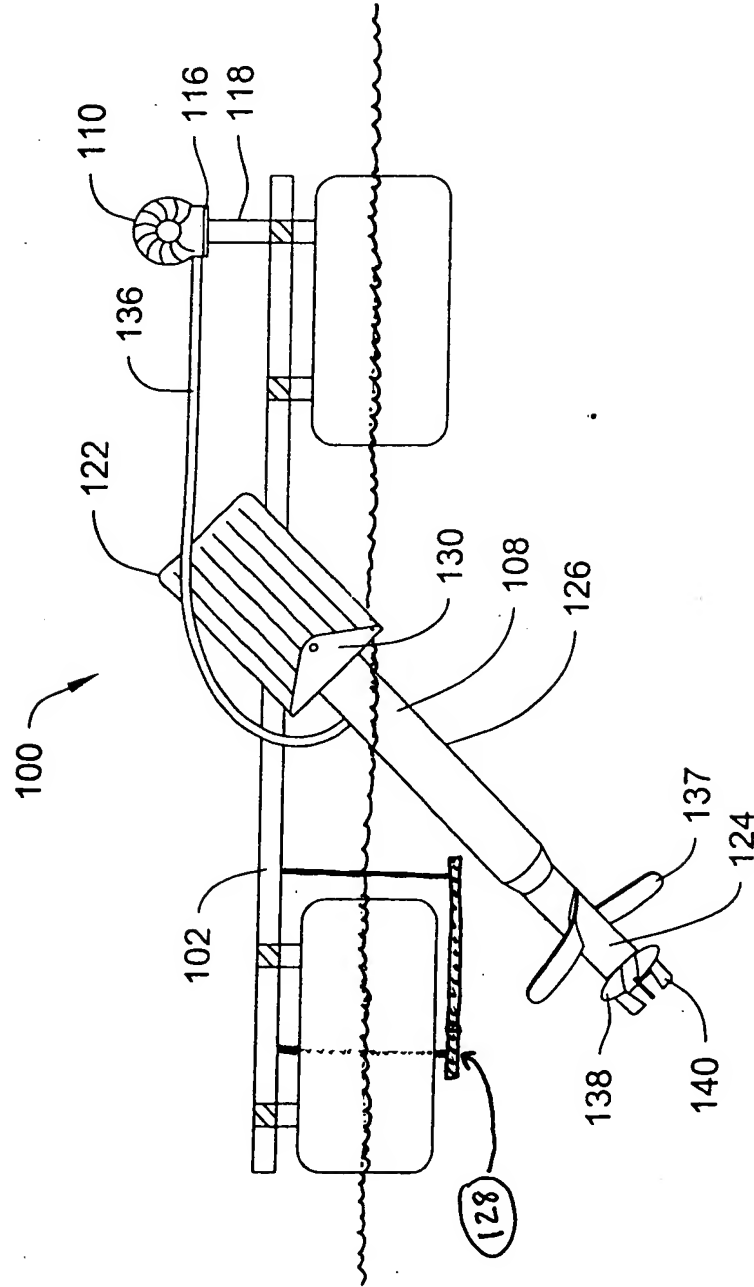


Figure 2